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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

~~v.~~
BENEDICT VAN, HEREUARE, INC., and
ECITY, INC.

Defendants.

Case No.

CONSENT OF BENEDICT VAN

Defendant Benedict Van ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

1. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violation of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(b) thereunder; and

(b) permanently prohibits Van from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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1 Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section
2 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

3 2. Defendant acknowledges that the Court is not imposing a civil penalty or
4 requiring payment of \$159,130.87 of disgorgement and pre-judgment interest based on
5 Defendant's sworn representations in Defendant's Statement of Financial Condition dated March
6 19, 2012 and other documents and information submitted to the Commission. Defendant further
7 consents that if at any time following the entry of the Final Judgment the Commission obtains
8 information indicating that Defendant's representations to the Commission concerning
9 Defendant's assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or
10 incomplete in any material respect as of the time such representations were made, the
11 Commission may, at its sole discretion and without prior notice to Defendant, petition the Court
12 for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment
13 and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In
14 connection with any such petition, the only issue shall be whether the financial information
15 provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material
16 respect as of the time such representations were made. In any such petition, the Commission
17 may move the Court to consider all available remedies, including but not limited to ordering
18 Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt
19 of the Court's Final Judgment. The Commission may also request additional discovery.
20 Defendant may not, by way of defense to such petition: (1) challenge the validity of this Consent
21 or the Final Judgment; (2) contest the allegations in the complaint; (3) assert that payment of
22 disgorgement, pre-judgment or post-judgment interest, or a civil penalty should not be ordered;
23 (4) contest the amount of disgorgement or pre-judgment or post-judgment interest; (5) contest
24 the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to
25 liability or remedy, including but not limited to any statute of limitations defense.

26 3. Defendant waives the entry of findings of fact and conclusions of law pursuant to
27 Rule 52 of the Federal Rules of Civil Procedure.
28

1 4. Defendant waives the right, if any, to a jury trial and to appeal from the entry of
2 the Final Judgment.

3 5. Defendant enters into this Consent voluntarily and represents that no threats,
4 offers, promises, or inducements of any kind have been made by the Commission or any
5 member, officer, employee, agent, or representative of the Commission to induce Defendant to
6 enter into this Consent.

7 6. Defendant agrees that this Consent shall be incorporated into the Final Judgment
8 with the same force and effect as if fully set forth therein.

9 7. Defendant will not oppose the enforcement of the Final Judgment on the ground,
10 if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and
11 hereby waives any objection based thereon.

12 8. Defendant waives service of the Final Judgment and agrees that entry of the Final
13 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant
14 of its terms and conditions. Defendant further agrees to provide counsel for the Commission,
15 within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit
16 or declaration stating that Defendant has received and read a copy of the Final Judgment.

17 9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted
18 against Defendant in this civil proceeding. Defendant acknowledges that no promise or
19 representation has been made by the Commission or any member, officer, employee, agent, or
20 representative of the Commission with regard to any criminal liability that may have arisen or
21 may arise from the facts underlying this action or immunity from any such criminal liability.
22 Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding,
23 including the imposition of any remedy or civil penalty herein. Defendant further acknowledges
24 that the Court's entry of a permanent injunction may have collateral consequences under federal
25 or state law and the rules and regulations of self-regulatory organizations, licensing boards, and
26 other regulatory organizations. Such collateral consequences include, but are not limited to, a
27 statutory disqualification with respect to membership or participation in, or association with a
28 member of, a self-regulatory organization. This statutory disqualification has consequences that

1 are separate from any sanction imposed in an administrative proceeding. In addition, in any
2 disciplinary proceeding before the Commission based on the entry of the injunction in this
3 action, Defendant understands that he shall not be permitted to contest the factual allegations of
4 the complaint in this action.

5 10. Defendant understands and agrees to comply with the Commission's policy "not
6 to permit a defendant or respondent to consent to a judgment or order that imposes a sanction
7 while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In
8 compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to
9 be made any public statement denying, directly or indirectly, any allegation in the complaint or
10 creating the impression that the complaint is without factual basis; and (ii) that upon the filing of
11 this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they
12 deny any allegation in the complaint. If Defendant breaches this agreement, the Commission
13 may petition the Court to vacate the Final Judgment and restore this action to its active docket.
14 Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take
15 legal or factual positions in litigation or other legal proceedings in which the Commission is not
16 a party.

17 11. Defendant hereby waives any rights under the Equal Access to Justice Act, the
18 Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to
19 seek from the United States, or any agency, or any official of the United States acting in his or
20 her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees,
21 expenses, or costs expended by Defendant to defend against this action. For these purposes,
22 Defendant agrees that Defendant is not the prevailing party in this action since the parties have
23 reached a good faith settlement.

24 12. Defendant agrees that the Commission may present the Final Judgment to the
25 Court for signature and entry without further notice.

26 13. Defendant agrees that this Court shall retain jurisdiction over this matter for the
27 purpose of enforcing the terms of the Final Judgment.

28 //

1 Date: 28 MAR 2012

Benedict Van
Benedict Van

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4 On 28 MAR 2012, 28 MAR 2012, a person known to me,
personally appeared before me and acknowledged executing the foregoing Consent.

5
6
7 Notary Public
Commission expires:

DAVID L. SHAO
U.S. Consulate General
Mish City, Vietnam

8 On _____, 2012, _____, a person known to me,
9 personally appeared before me and acknowledged executing the foregoing Consent with full
authority to do so on behalf of _____ as its _____

10
11 Notary Public
Commission expires:

12
13
14 Approved as to form:

15
16 Stephen M. Wurzburg, Esq.
17 Pillsbury Winthrop Shaw & Pittman LLP
18 2475 Hanover Street
19 Palo Alto, California 94304
20 650-233-4538
21 Attorney for Defendant